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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Berendo Property, et al.,

No. CV-22-01721-PHX-SMM

10 Plaintiffs,

ORDER

11 v.

12 Closed Loop Refining and Recovery
13 Incorporated, et al.,

14 Defendants.

15 Pending before the Court is Plaintiffs and Defendant IMS Electronics Recycling,
16 Inc.'s Joint Motion for Approval of Settlement Agreement. (Doc. 40).

17 **I. BACKGROUND**

18 Plaintiffs are four companies who, between them, own two warehouses in Phoenix,
19 Arizona. (Doc. 1 at 3). Between 2010 and 2016, Plaintiffs leased these warehouses to
20 Defendant Closed Loop Refining and Recovery, Inc. (*Id.* at 4). Closed Loop used these
21 warehouses to operate recycling centers that recycled—or claimed to recycle—CRT waste.
22 (*Id.* at 11-12). CRT (cathode ray tubes) are used in older television, computer, and other
23 electronic displays and contain lead, which is listed as a hazardous substance under the
24 Comprehensive Environmental, Response, Compensation, and Liability Act (“CERCLA”).
25 (*Id.* at 2-3).

26 Plaintiffs allege that Closed Loop operated a sham recycling scheme, in which it
27 charged companies for accepting their CRT waste and—rather than recycling it in
28 accordance with CERCLA—stockpiled and ultimately abandoned it. (*Id.* at 12). Plaintiffs

1 allege that Closed Loop accepted approximately 195 million pounds of CRT waste, of
 2 which 106 million was abandoned at the warehouses. (*Id.*) They allege that the cost of
 3 removing the waste and cleaning up the warehouse sites may exceed \$15 million. (*Id.* at
 4 20).

5 On October 7, 2022, Plaintiffs filed suit against 51 defendants, seeking cost
 6 recovery, declaratory relief, and common law damages. (Doc. 1). Defendants include
 7 Closed Loop and 50 Arranger/Transporter Defendants, among them IMS Electronics
 8 Recycling, Inc. (“IMS”). (*Id.* at 8). According to Closed Loop’s records, IMS arranged for
 9 the transport of 71.5 million pounds of waste to the warehouses. (*Id.* at 8; Doc. 40 at 3).

10 The Court has previously approved a consent decree between Plaintiffs and
 11 Defendant UNICOR (Doc. 24) and a settlement agreement between Plaintiffs and
 12 Defendant California Electronic Asset Recovery. (Doc. 26).

13 On January 31, 2023, Plaintiffs and IMS filed a Joint Motion for Approval of
 14 Settlement Agreement. (Doc. 40). Under the settlement agreement, IMS has agreed to pay
 15 Plaintiffs \$5,000,000.00. (Doc. at 40 at 20). This money will go towards response costs.
 16 (*Id.*) The Arizona Department of Environmental Quality has not objected to the settlement.
 17 (Doc. 40 at 50-51).

18 **II. DISCUSSION**

19 A. Legal Standard

20 In determining whether to approve a settlement in the CERCLA context, a court
 21 need not determine whether the settlement is the best possible settlement available. City of
22 Colton v. Am. Promotional Events, Inc., 281 F. Supp. 3d 1009, 1012 (C.D. Cal. 2017).
 23 Rather, courts must determine whether the proposed settlement is procedurally fair,
 24 substantively fair, reasonable, and consistent with the policies of CERCLA. State of
25 Arizona v. Nucor Corp., 825 F. Supp. 1452 (D. Ariz. 1992), aff’d on other grounds, 66 F.3d
 26 213 (9th Cir. 1995), United States v. Montrose Chemical Corp. of Calif., 50 F.3d 741 (9th
 27 Cir. 1995).

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1 B. Procedural Fairness

2 To determine procedural fairness, courts “must look to the negotiation process and
3 ‘attempt to gauge its candor, openness, and bargaining balance.’” Nucor, 825 F. Supp. at
4 1456 (quoting U.S. v. Cannons Eng’g Corp., 899 F.2d 79, 86 (1st Cir. 1990)). Toward this
5 end, the parties state that negotiations were executed in good faith and at arm’s length.
6 (Doc. 40 at 7).

7 The Court finds the settlement agreement was the result of procedural fairness. Both
8 parties were represented in settlement negotiations by experienced attorneys. (Id. at 7, 24,
9 36, 47). The parties also considered all relevant factors when conducting negotiations. (Id.
10 at 7).

11 C. Substantive Fairness and Reasonableness

12 Substantive fairness “concerns the issues of corrective justice and accountability.”
13 Nucor, 825 F. Supp. at 1458. “A party should bear the costs of the harm for which it is
14 legally responsible.” Cannon, 899 F.2d at 87. In determining the reasonableness of
15 CERCLA a settlement, courts will consider the “efficacy of the settlement in compensating
16 the public for actual and anticipated remedial and response costs and the relative strength
17 of the parties’ litigating.” Nucor, 825 F. Supp. at 1464. As part of this analysis, courts
18 examine whether the settlement amount is proportional to the settling defendant’s share of
19 responsibility for the environmental damage. Montrose, 50 F.3d at 747; Cannons, 899 F.2d
20 at 87.

21 The parties’ settlement agreement is substantively fair and reasonable. Plaintiffs
22 allege—based on Closed Loop’s records—that IMS was responsible for 71.5 million out
23 of the 195 million tons of CRT waste that reached the warehouse. This amounts to a little
24 under 36.7% of the total CRT waste. The estimated cleanup cost is over \$15 million. The
25 \$5,000,000.00 that IMS is agreeing to contribute to cleanup costs therefore represents a
26 little over 33.3% of the total cleanup costs. Because the settlement amount is proportional
27 to IMS’ alleged share of responsibility and the funds will be put toward cleanup efforts,
28 the settlement agreement is substantively fair and reasonable.

1 E. Consistency with CERCLA

2 One of CERCLA's primary goals is to encourage early settlements. See Montrose
 3 at 745-56. This helps further the goal of ensuring prompt site cleanup. Nucor, 825 F. Supp.
 4 at 1464. An additional goal of CERCLA is to ensure accountability from those responsible
 5 for any abandoned waste. Id.

6 Parties' settlement agreement is firmly in line with these goals. This settlement is
 7 relatively prompt: filed less than three months after Plaintiffs filed their initial complaint.
 8 It will streamline any future litigation by removing a defendant from the case and will
 9 quickly transfer money into the cleanup fund. Further, it holds IMS accountable for their
 10 contribution to the abandoned CRT waste at the warehouses.

11 F. *Pro Tanto v. Pro Rata* Crediting

12 Under CERCLA, district courts have discretion in allocating response costs among
 13 liable parties. Am. Cyanamid Co. v. Capuano, 381 F.3d 6, 21 (1st Cir. 2004). In
 14 determining how one defendant's settlement affects the liability of other defendants, courts
 15 may employ either a *pro tanto* or *pro rata* crediting approach. Ameripride Servs. Inc. v.
 16 Texas E. Overseas Inc., 782 F.3d 474, 483-4 (9th Cir. 2015). Under a *pro rata* approach, a
 17 court must determine the liability of all settling and non-settling defendants and then reduce
 18 the shares of non-settling defendants by the percentage of the settlor's fault. Akzo Nobel
 19 Coatings, Inc. v. Aigner Corp., 197 F.3d 302, 308 (7th Cir. 1999). Under the *pro tanto*
 20 approach, non-settling defendants' liability is simply reduced by the dollar amount of the
 21 settlements. Ameripride, 782 F.3d at 484.

22 In the CERCLA context, *pro tanto* crediting encourages defendants to settle and
 23 plaintiffs to promptly and voluntarily clean up hazardous substances. Ameripride, 782 F.3d
 24 at 487. It is also easier to apply here than the *pro rata* approach, which would necessitate
 25 that the Court determine the liability of 50 other Defendants before it can approve the
 26 settlement agreement.

27 The Court uses its discretion to hold that IMS' settlement payment will be credited
 28 *pro tanto* in determining other Defendants' equitable shares of remediation costs.

III. CONCLUSION

Because the settlement agreement is substantively and procedurally fair, reasonable, and consistent with CERCLA, the Court will grant the Joint Motion for Approval of Settlement Agreement (Doc. 40) and approve the settlement.

Accordingly,

IT IS HEREBY ORDERED granting the Joint Motion for Approval of Settlement Agreement. (Doc. 40). The Court approves the Settlement Agreement. (Doc. 40 at 16-34).

IT IS FURTHER ORDERED dismissing Defendant IMS Electronics Recycling, Inc. from the case and **directing** the Clerk of the Court to dismiss Defendant IMS Electronics Recycling, Inc.

IT IS FURTHER ORDERED dismissing and barring, except for the exceptions stated in the Settlement Agreement and except for claims asserted by the U.S. Environmental Protection Agency (“EPA”) and the State of Arizona (acting on Arizona Department of Environmental Quality’s behalf), all past, present, and future claims, counterclaims, and crossclaims against Defendant IMS Electronics Recycling, Inc. related to Plaintiffs’ two warehouse sites.

IT IS FURTHER ORDERED that Defendant IMS Electronics Recycling, Inc.'s settlement payment will be credited *pro tanto* in determining other Defendants' equitable shares of remediation costs. The liability of the remaining parties shall accordingly be reduced by the dollar amount of IMS Electronics Recycling, Inc.'s settlement payments.

IT IS FURTHER ORDERED that this Court retains jurisdiction and shall retain jurisdiction after entry of judgment in this case to enforce the terms and conditions of the Settlement Agreement.

Dated this 31st day of January, 2023.

Honorable Stephen M. McNamee
Senior United States District Judge